



## United States Department of the Interior

NATIONAL PARK SERVICE  
Pacific West Region  
333 Bush Street, Suite 500  
San Francisco, California 94104-2828



IN REPLY REFER TO:

L7617 (PWR-NR)

October 3, 2012

Amber D. Abbasi  
Cause of Action  
2100 M Street, NW, Suite 170-247  
Washington DC 20037

Dear Ms. Abbasi:

This letter responds to the complaint you filed on August 7, 2012, on behalf of Kevin and Nancy Lunny, the owners of Drakes Bay Oyster Company, and Dr. Corey Goodman, regarding the *Draft Environmental Impact Statement: Drakes Bay Oyster Company Special Use Permit* (Draft EIS) and the March 2012 *Atkins North America, Final Report on Peer Review of the Science Used in the National Park Service's Draft Environmental Impact Statement: Drakes Bay Oyster Company Special Use Permit* (Atkins Report).

As noted in the Draft EIS, the Secretary's authority under Section 124 is "notwithstanding any other provision of law". The Department decided as a matter of discretion to prepare the EIS and use the procedures of the National Environmental Policy Act (NEPA) to help inform its decision. Similarly, the Department has considered your Information Quality Act (IQA) Complaint as a matter of discretion.

Director's Order 11B, which sets forth National Park Service policy regarding the resolution of complaints under the IQA, provides that IQA complaints on draft documents like the Draft EIS will generally be treated in the same manner as any other comment on the draft document. Your complaint was submitted on August 7, 2012. The official public comment period on the Draft EIS closed on December 9, 2011. Your IQA complaint was therefore submitted after the close of the official Draft EIS public comment period and was untimely.

The Atkins Report was commissioned by the Department of the Interior to provide an independent assessment of the quality of the science used by the NPS in the Draft EIS. As such, the Atkins Report serves a primarily internal function and is not being separately "disseminated" to the public in a manner subject to the IQA or Director's Order 11B. It is being provided to the public solely in order to disclose its role in informing the EIS.

TAKE PRIDE<sup>®</sup>  
IN AMERICA 

During the public comment period on the Draft EIS, the National Park Service received more than 52,000 comment letters. Drakes Bay Oyster Company (DBOC) submitted lengthy comments on the Draft EIS. DBOC, and ENVIRON on behalf of DBOC, submitted extensive comments on most topics analyzed as part of the Draft EIS, including the submittal of soundscape data gathered by its consultant, ENVIRON. The NPS also received detailed comments on other issues raised in your complaint, including the effects of the alternatives on wilderness resources, harbor seals, birds and bird habitat, and visitor experience and recreation. On September 27, 2012, the National Academy of Sciences published the *Scientific Review of the Draft Environmental Impact Statement, Drakes Bay Oyster Company Special Use Permit* (NAS Review). The NAS Review assessed the scientific information, analysis, and conclusions in the Draft EIS. Thus, the issues raised in your complaint will be addressed by the NPS as part of its response to comments on the Draft EIS.

Finally, we note that based on your Complaint, Dr. Goodman does not appear to be an "affected person" under the IQA. The Complaint expressly acknowledges that Dr. Goodman "does not have a pecuniary interest in this matter." Dr. Goodman's voluntary participation in the public debate over DBOC's operation does not make him an affected party within the meaning of the IQA. The "reputational harm" alleged in the Complaint was apparently caused by the reactions of third parties to Dr. Goodman's own voluntary statements, and is not based on the actual content of the Draft EIS or the Atkins Report. Moreover, Dr. Goodman did not submit comments on the Draft EIS. We also disagree with the complaint's assertion that Dr. Goodman's membership in the NAS qualifies him as an affected person. Dr. Goodman had no official role in any of the NAS reviews of this matter. His support for DBOC does not make him an affected person within the meaning of the IQA. This issue does not affect the ultimate disposition of your Complaint, because the other complainants qualify as "affected persons."

If you wish to appeal this decision, as described in Section IV(G) of Director's Order 11-B, please send the appeal to:

National Park Service  
Office of the Director  
Attention: Information Quality Request  
1849 C Street, NW, Mail Stop 3115  
Washington DC 20240

Sincerely,



Christine S. Lehnertz  
Regional Director, Pacific West Region